TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~303.~~ 104

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

ONE HUNDRED BARRELS DISTILLED SPIRITS, JOHN HENDERSON, CLAIMANT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICTS OF MISSOURI.

FILED NOVEMBER 22, 1870.

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1 MISSOURI DISTRICTS, *sct:*

Pleas before the honorable circuit court of the United States for the districts of Missouri, at the October term thereof, A. D. 1870.

THE UNITED STATES, EX REL. BARTON ABLE,
ag'st
100 BARRELS OF DISTILLED SPIRITS, MARKED, &c., John Henderson, claimant. } No. 1498.

Be it remembered that, heretofore, to wit, on the fourth day of October, A. D. 1869, there was filed in the office of the clerk of the circuit court of the United States in and for the districts of Missouri, a transcript of the record and proceedings had in the above-entitled cause in the district court of the United States in and for the eastern district of Missouri, which transcript is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Be it remembered that, on the seventh day of September, in the year of our Lord eighteen hundred and sixty-eight, there was filed in the clerk's office of the district court of the United States of America in and for the eastern district of Missouri, by John W. Noble, esquire, attorney of said United States, in and for said district, an information, in case No. 1498, of—

THE UNITED STATES, EX REL. BARTON ABLE,
ag'st
100 BARRELS OF DISTILLED SPIRITS, MARKED, &C. } No. 1498.

2 Which information is in the words and figures following, to wit:

Information.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the district court of said United States in and for said district.

To the Honorable SAMUEL TREAT, judge of said district court:

Now comes John W. Noble, attorney of the United States for said district, and, in his own proper person, suing on behalf of said United States, on the information of Barton Able, collector of the first collection district, Missouri, presents this his information, against one hundred (100) barrels of distilled spirits, marked "N. J.," commonly known as "highwines," in a cause of seizure and forfeiture, under the act of Congress approved March 2nd, 1867, entitled "An act to amend existing laws relating to internal revenue, and for other purposes," and also under the acts to which the same is amendatory; and thereupon propounds and gives said judge to understand and be informed—

First. That Barton Able, esq., collector of internal revenue for the first collection district of Missouri, hath seized, and yet holds in his possession and custody, the property above described, as forfeited to the United States under the provisions of the act of Congress aforesaid, for the causes hereinafter set forth; that said seizure was made on the first day of September, A. D. 1868, on land, at said eastern district of

Missouri; and that proceedings to enforce said forfeiture have been commenced by said collector within twenty days after said seizure.

Second. That the spirits in the said one hundred barrels contained, were at some place within the United States to said attorney unknown, and between the first day of September, A. D. 1866, and the date of seizure, made and manufactured by some person or persons to said
3 attorney unknown, and were then & there liable to the tax imposed thereon by law, and were then and there, after the same were manufactured, found elsewhere than in a bonded warehouse, to wit, at the city of St. Louis, at said district, not having been removed from such warehouse according to law, and the tax imposed thereon by law not having been paid, contrary to the form of the statutes of the United States in such case made and provided, whereby and by force of said statutes the said property became and is forfeited to the uses in said statutes specified.

Third. That the said one hundred barrels of spirits were at some place within the United States to said attorney unknown, and between the 1st day of September, A. D. 1866, and the date of said seizure, manufactured by some person or persons to said attorney unknown, & were then and there liable to the tax imposed thereon by law, and were removed, after distillation, from the place where the same were distilled, otherwise than into a bonded warehouse, as provided by law, the tax imposed thereon not having been paid, contrary to the form of the statutes of the United States in such case made and provided; whereby, and by force of said statutes, the said property became & is forfeited to the uses in said statutes specified.

Fourth. That the said one hundred barrels of spirits were manufactured at some place within the United States to said attorney unknown, & between the first day of September, A. D. 1866, and the date of said seizure, by some person or persons to said attorney unknown, & were then and there goods and commodities on which a tax was then & there imposed by the provisions of law, & the same were removed from the place where distilled with intent to defraud the United States of such tax, the same being then and there unpaid, contrary to the form
4 of the statutes of said United States in such case made and provided.

Fifth. That said spirits were made and manufactured at some place within the United States to said attorney unknown, between the 1st day of September, A. D. 1866, & the date of said seizure, by the use of certain boilers, stills, and other vessels, of which said unknown person or persons, then and there had superintendence; and that during the time said unknown person or persons carried on the business aforesaid, and both before said spirits were distilled, & while they were in his or their possession, said unknown person or persons neglected and refused, from day to day, to make or cause to be made true and exact entry in a book, kept in such form as the Commissioner of Internal Revenue had prescribed, of the number of pounds & gallons of material used for the purpose of producing spirits; the number of gallons of spirits distilled; the number of gallons of spirits placed in warehouse, and the proof thereof; & the number of gallons sold, with the proof thereof; and the name & place of business or residence of the person to whom sold; contrary to the form of the statutes of said United States in such case made and provided, &c.

Sixth. That the said spirits were made & manufactured at some place within the United States to said attorney unknown, between the 1st day of September, A. D. 1866, and the date of said seizure, by some person

or persons to said attorney unknown, by the use and means of certain stills, boilers, and other vessels, of which said unknown person or persons then & there had superintendence; and said person or persons did then & there, both before said spirits were distilled, and afterwards, while the same were in his possession, neglect & refuse, on the
5 first, eleventh, & twenty-first days of each & every month, or within five days thereafter, to render to the assessor or assistant assessor an account in duplicate taken from his or their books in the particulars hereinbefore recited in the next preceding article of this information, of all the facts occurring after the last day of account preceding, contrary to the form of the statutes of the United States in such case made and provided, whereby, and by force of said statutes, the said property became, and is, forfeited to the uses in said statutes specified.

Seventhly. That all and singular the premises are true, and within the jurisdiction of the court; that by reason of the matters above set forth, the said one hundred barrels of distilled spirits, commonly known as "highwines" have become forfeited to the United States.

Wherefore, said attorney prays that the usual process and monition may issue, according to the practice of said court in similar cases, to enforce said forfeiture, and requiring notice to be given to all persons concerned in interest, to appear and show cause on the return day of said process, why said forfeiture should not be decreed; and that due proceedings being had, said goods and property may be condemned and sold; and for such other and further relief as is proper in the premises.

(Signed) JOHN W. NOBLE,
U. S. Attorney Eastern District Mo.

I enter as informer in the above cause.

BARTON ABLE,
Collector of the 1st *Collection District Mo.*

And thereupon, on the eighth day of September, A. D. 1868, there was issued out of the clerk's office of this district court a warrant of arrest and monition, in the usual form according to the rules and practice of said court; which warrant is in the words and figures following, to wit:

6 *Warrant of arrest and monition.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

The President of the United States of America, to the marshal of said United States in and for said district, greeting:

Whereas an information has been filed in the district court of said United States in and for the eastern district of Missouri, on the seventh day of September, in the year of our Lord eighteen hundred and sixty-eight, by John W. Noble, esq., attorney of the United States in and for said district, suing on behalf of the said United States, on the information of Barton Able, collector of the first collection district of Missouri, against one hundred (100) barrels of distilled spirits, marked, &c., in a cause of seizure and forfeiture under the act of Congress, approved 2nd March, 1867, and also under the acts to which the same is amendatory, for the reasons and causes in said information mentioned, and praying the usual process and monition of said district court in that behalf to be issued: You are hereby commanded to arrest and take into your pos-

session for safe custody, the said one hundred (100) barrels of distilled spirits, marked "N. J.," commonly known as "highwines," and you are commanded to keep safely all the property so arrested by you, and detain the same, subject to the further order of said district court unless sooner discharged from your custody according to law or the rules of said district court. And you are further commanded to cause public notice of such arrest of said property, and for the time assigned for the return of this warrant and the hearing of said cause to be given by publication in the "Missouri Republican," a public newspaper printed at
7 the city of St. Louis, in said district, by posting a copy of such notice as is required by like law, and publication in said newspaper.

Also to admonish and summon all persons claiming any interest in said 100 barrels of distilled spirits, or knowing or having anything to say why the same should not be decreed to be forfeited to the said United States, and condemned and sold to answer the prayer of said information, that they be and appear before said district court at a return term thereof, to be begun and holden at said district courts-room, in the city of St. Louis, in said district, on the first Monday, the fifth day of the month of October next, at ten o'clock in the forenoon, (when and where said cause will be heard,) then and there to interpose their claims and answer said information, and make their allegations in that behalf. And of what you shall have done in the premises do you also then and there make return, together with this warrant.

Witness the Honorable Samuel Treat, judge of said district court, this eighth day of September, in the year of our Lord eighteen hundred and sixty-eight.

Issued at my office in said city of St Louis, under the seal of said district court, the day and year last above written.

[SEAL.] (Signed) BEN. F. HICKMAN,
Clerk of said District Court.

And on the tenth day of September, A. D. 1868, there was filed in the clerk's office of said district court by John Henderson, a claim herein, according to the rules and practice of this court, which claim is in the words and figures following, to wit:

Claim of John Henderson.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the district court of said United States, in and for said district. In cause No. 1498, A. D. 1868, of—

UNITED STATES OF AMERICA, EX. REL. BARTON ABLE, libellant,
against
8 100 BARRELS OF DISTILLED SPIRITS.

To the Honorable Samuel Treat, judge of said district court:

The claim of John Henderson, made in the above entitled cause, alleges as follows:

First. That the said claimant is the true and bona fide owner of said 100 barrels of distilled spirits marked "N. J.," and that no other person is the owner thereof.

Second. That said owner resides at New Orleans in the State of Louisiana.

(Signed) G. WOLTMAN.
(Signed) KNIGHT & ALLEN,
Proctors for claimant.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Gustavus Woltman, being duly sworn, deposes and says that, to the best of his knowledge and belief, the allegations in the foregoing claim are true, and that he has put in the above claim as agent of said John Henderson, the owner of said 100 barrels of distilled spirits, & is authorized as such agent to put in the same for said Henderson, who is now out of this district.

(Signed) G. WOLTMAN.

Subscribed and sworn to by the above-named affiant this tenth day of September, 1868, before me at my office in the city of St. Louis, in said eastern district of Missouri.

(Signed) F. A. WERNER,
Commissioner of the U. S. Circuit Court in and for the Districts of Missouri.

And on said tenth day of September, A. D. 1868, there was filed in the clerk's office of said district court by said claimant a stipulation as to value of said libelled property; which stipulation is in the words and figures following, to wit:

Stipulation as to value.

9 In the district court of the United States within and for the eastern district of Missouri.

UNITED STATES, EX REL. BARTON ABLE, *vs.* 100 BARRELS OF DISTILLED SPIRITS. } No. 1498.

It is hereby agreed for the purpose of bonding the property described in the information in the above-entitled cause that the said one hundred barrels of distilled spirits, containing 3,970 proof gallons, are of the aggregate value of five thousand dollars, and that Henry C. Haarstick & Robert Barth are approved as good and sufficient securities on the stipulation for the release thereof.

(Signed) BARTON ABLE, *Collector of Int. Revenue.*
" JOHN W. NOBLE, *U. S. Att'y.*
" KNIGHT & ALLEN, *Att'y's for Claimant.*

And on said tenth day of September, A. D. 1868, there was filed in the clerk's office of said district court, by said claimant, a stipulation for release of libelled property, according to the rules and practice of this court; which stipulation is in the words and figures following to wit:

Stipulation for release of libelled property.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the district court of said United States in and for said district. Stipulation for release of libelled property, under rule 37 of said district court.

Whereas an information was filed in this court on the seventh day of September, in the year of our Lord, eighteen hundred and sixty-eight, by John W. Noble, esquire, U. S. attorney for said district, suing, on behalf of said United States, on the information of Barton Able, collector of the first district of Missouri, against 100 barrels of distilled spirits, marked "N. J.," and commonly known as "high-wines," and praying that the same may be decreed to be forfeited to the said United States and condemned and sold to answer the prayer of said information, for the reasons and causes in said information mentioned; and said 100 barrels of spirits have been arrested by the marshal of
10 said United States in and for said eastern district of Missouri, and *is* still by him held in custody by virtue of a warrant issued in this cause out of the clerk's office of said district court, to answer the prayer of said information, and an agreement of appraisement, signed by the collector of internal revenue, first district of Missouri, the district attorney, and attorney for the claimants in this case, having been filed herein, in which said agreement the said 100 barrels of distilled spirits, marked "N. J.," have been appraised for the purposes of bond at the sum of five thousand dollars, and John Henderson, of the city of New Orleans, State of Louisiana, has filed, in this cause, in said clerk's office, a claim to said 100 bbls. of spirits, and also desires that the same shall be discharged from said custody of said marshal, on said claimant's giving a stipulation, according to the rules and practice of this court, and the undersigned stipulators, Gustavus Woltman, resident at the city of St. Louis, in said eastern district, as principal, and Henry C. Haarstick, resident at the city of St. Louis, in said district, and Robert Barth, resident also in the city of St. Louis, in said eastern district of Missouri, as sureties, hereby consenting and agreeing that in case of default or contumacy on the part of said claimant, or said principal or sureties, execution for the sum of five thousand dollars may issue against their goods, chattles, and lands:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and are, jointly and severally bound in the sum of five thousand dollars, conditioned that the claimant above named shall abide by the final decree in this cause, and pay such amount, with interest, costs, damages, and expenses, as may be awarded against him by any interlocutory or final decree made therein by said district court, or (in case of appeal) by the apellate court.

11 In witness whereof, we hereto severally sign our names, at the city of Saint Louis, in said eastern district of Missouri, the eleventh day of September, A. D. eighteen hundred and sixty-eight.

(Signed) G. WOLTMAN.
(Signed) HENRY HAARSTICK.
(Signed) ROBERT BARTH.

The above stipulation subscribed and acknowledged by said Gustavus Woltman, Henry C. Haarstick, and Robert Barth, the parties

thereto, before me, and approved by me this eleventh day of September, A. D. 1868, at my office in said city of Saint Louis.

(Signed) F. A. WERNER,
Commissioner of the U. S. Circuit Court in & for the Districts of Missouri.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Henry C. Haarstick and Robert Barth, being duly sworn, each and severally, deposes and says, that he resides as stated therein, and is worth, over and above his debts and liabilities, the sum of ten thousand dollars, and that he owns real estate to that amount, subject to execution, within the eastern district of Missouri.

(Signed) HENRY C. HAARSTICK.
(") ROBERT BARTH.

Subscribed and sworn to by said Henry C. Haarstick and Robert Barth, the above-named affiants, this eleventh day of September, A. D. 1868, before me, at my office in the said city of Saint Louis.

(Signed) F. A. WERNER,
Commissioner of the U. S. Circuit Court in and for the Districts of Missouri.

And on the 14th day of September, A. D. 1868, there was filed in the clerk's office of this district court, by said claimant, his petition for the release of said libelled property; which petition is in the words and figures, following, to wit:

Petition for release.

In the district court of the United States for the eastern dis-
12 trict of Missouri.

To the Hon. Samuel Treat, judge of said district court:

The petition of John Henderson, of New Orleans, in the State of Louisiana, respectfully represents that he is true and bona fide owner of the 100 barrels of distilled spirits, seized in case No. 1498 in this court, & claimed by him therein through G. Woltman, his agent; that said property is perishable and liable to decay while in the custody of the United States marshal, pendente lite; and is also liable to depreciation in value from the fluctuations in the market value thereof: Wherefore this petitioner prays that he may be permitted to file a good and sufficient bond for the release thereof, in the amount of its appraised value, as set forth in the stipulation herewith filed & signed by the U. S. collector for the first collection district, and the U. S. district attorney within and for said eastern district of Missouri; and that said 100 barrels of distilled spirits may be ordered to be released and delivered to him upon the terms aforesaid, or upon such terms and conditions as may be deemed just and reasonable by this honorable court.

(Signed) KNIGHT & ALLEN,
Proctors for Claimant.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

G. Woltman, being duly sworn, on his oath says that he is the duly

authorized agent of John Henderson, the above claimant, who is now without said district, & that the foregoing petition, & the matters and things therein stated, are true, to the best of his knowledge and belief.

(Signed) G. WOLTMAN.

Subscribed and sworn to by said affiant before me, at office in the city of St. Lou Mo., this 11th day of September, A. D. 1868.

(Signed) F. A. WERNER,
Comm'r, U. S. Circuit Court, Districts of Missouri.

13 And at a special term of this district court, begun and holden at the city of St. Louis, in said district, on Monday, the 14th day of September, A. D. 1868, the following proceedings took place in this case on said day, to wit:

Order of release and delivery.

IN CASE NO. 1498, OF THE UNITED STATES, EX rel. B. Able, *ag'st* 100 BARRELS OF DISTILLED SPIRITS, MARKED, &C.	No. 1498.

This day came the claimant in this case, by Messrs. Knight & Allen, his attorneys, and the said 100 barrels of distilled spirits, marked "N. J.," and commonly known as "highwines," having been arrested by the marshal of said United States in and for this district, and being still in his custody under the warrant of arrest heretofore issued in this case, and an agreement of appraisement signed by Barton Able, collector of internal revenue, John W. Noble, U. S. attorney, and said attorneys for claimant, having been filed herein, in which said agreement the said 100 barrels of spirits have been appraised for the purposes of bond at the sum of ($5,000 00,) five thousand dollars; thereupon, on motion of said claimant by said attorneys, and upon his petition this day filed herein, the court ordered that, upon payment of costs of appraisement, and upon said claimants giving a stipulation, in accordance with the rules and practice of this court, in the amount of said appraised valuation, for the release of said spirits, so arrested as aforesaid, a warrant of discharge and delivery in the usual form, according to said rules and practice, and commanding said marshal to deliver said spirits to said claimant or his agents herein, and returnable on the return day of said warrant of arrest, be issued in this cause.

14 And thereupon, on said fourteenth day of September, A. D. 1868, there was issued out of the clerk's office of this district court a warrant of discharge and delivery, in the usual form, according to the rules and practice of said court, which warrant is in the words and figures following, to wit:

Warrant of discharge and delivery.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the district court of said United States in and for said district.

The President of the United States of America to the marshal of said United States in and for said district, greeting:

Whereas heretofore, at the suit of the United States, ex rel. Barton

Able, esq., collector first district of Missouri, against one hundred barrels of distilled spirits, marked "N. J.," commonly known as "high wines," a warrant of arrest, dated on the eighth day of September, in the year of our Lord eighteen hundred and sixty-eight, was issued to you out of the clerk's office of said district court, by which warrant you were commanded, among other things, to arrest and take into your possession, for safe custody, the said 100 barrels of distilled spirits, marked, &c., and you were commanded by said warrant to keep safely all property so arrested by you, and detain the same, subject to the further order of said district court, unless sooner discharged from your custody, according to law or the rules of said district court; and whereas bond for the release of said spirits have been given: Now, therefore, (it appearing to said district court that you have in your custody certain property heretofore arrested by you by virtue and authority of said warrant of arrest,) you are hereby commanded to discharge from your custody
15 the said one hundred barrels of distilled spirits marked "N. J.," and to deliver the same to the claimant in said cause, (unless the said property be also held in custody by you by virtue and authority of process duly issued to you by competent authority in some other cause.) And do you bring this warrant into said district court on the return day of said warrant of arrest, and then and there make due return of your proceedings thereon.

Witness the Honorable Samuel Treat, judge of said district court, this fourteenth day of September, in the year of our Lord eighteen hundred and sixty-eight.

Issued at my office in the city of St. Louis, in said district, under the seal of said district court, the day and year last above written.

[L. S.] (Signed) B. F. HICKMAN,
Clerk of said District Court.

And on the first Monday, the fifth day of October, A. D. 1868, the marshal of said United States in and for said district returned into court the warrant of arrest and monition heretofore issued in this case, together with his return of his proceedings thereon; and said warrant, with said return, was thereupon filed in the clerk's office of said district court on said last-named day; and the return of said marshal upon said warrant is in the words and figures following, to wit:

Marshal's return on warrant of arrest.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I return on the within warrant that I have executed the same by arresting and taking into my possession the within-named 100 barrels distilled spirits, marked "N. J.," &c., and by serving notice on Barton Able, collector; and I delivered a copy of the information to G. Woltman, consignee, at St. Louis, in said district, Sept'r 9th, 1868;
16 and I gave public notice of said arrest, and the time and place assigned for the hearing of the cause, by advertisement in the Missouri Republican, daily, 15 days, from the 10th to the 24 day of September, 1868, (both days inclusive,) and I posted a copy of said notice for the same length of time on the bulletin board in the post office at said St. Louis, the most public place nearest the place assigned for the hearing of the cause.

A copy of said notice is hereto attached, and made a part of this return.

(Signed) J. B. ROGERS,
U. S. Marshal E. Dist. Mo.

And annexed and accompanying said return on said warrant is a printed copy of a proclamation, which copy is in the words and figures following, to wit:

Marshal's proclamation.

United States marshal's proclamation.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, J. B. Rogers, U. S. marshal for the eastern district of Missouri, do hereby give public notice that, in case No. 1498 of the United States, ex rel. Barton Able, against 100 barrels distilled spirits, marked "N. J.," &c., in a cause of seizure and forfeiture, under act of Congress approved March 2, 1867, and also under the acts to which the same is amendatory, I did, on the 9th day of September, A. D. 1868, at the city of St. Louis, Mo., arrest and take into my possession for safe custody the said 100 barrels of distilled spirits, marked "N. J.," commonly known as "highwines;" and I hereby also give public notice that the time assigned for the return of said warrant, and the hearing of this cause, is the 5th day of October next, 1868, at ten o'clock in the forenoon; and I hereby admonish and summon all persons claiming any interest in said 100 barrels distilled spirits, &c., or knowing or having anything to say why the same should not be decreed to be forfeited to the United States,
17 and be condemned and sold to answer the prayer of said information, that they be and appear before said district court at its rooms in the city of St. Louis, in said district, on said fifth day of October, 1868, when and where said cause will be heard, then and there to interpose their claims, and answer said information, and make their allegations in that behalf.

(Signed) J. B. ROGERS,
U. S. Marshal Eastern District of Missouri.

ST. LOUIS, *September* 10, 1868.

And on the said first Monday, the fifth day of October, A. D. 1868, the marshal of said United States in and for said district, returned into court the warrant of discharge and delivery heretofore issued in this case, together with his return of his proceedings thereon; and said warrant, with said return, was thereupon filed in the clerk's office of said district court on said last-named day; and the return of said marshal upon said warrant is in the words and figures following, to wit:

Marshal's return on warrant of discharge.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the district court of said United States, in and for said district.

I return on the within warrant, that I executed the same on the 14 day of September, in the year of our Lord eighteen hundred and , at St. Louis, in said eastern district of Missouri, by then and there discharging from my custody said one hundred barrels of distilled spirits, marked, &c., and by then and there delivering said property to G. Woltman & Co.

(Signed) J. B. ROGERS,
Marshal of said United States in and for said district.
By J. W. MORGAN, *Dep'ty.*

And at a regular stated term of this district court begun and holden at the city of St. Louis, in said district, on the first Monday, the
18 fifth day of October, A. D. 1868, the following proceedings took place in this case on said last-mentioned day, to wit:

IN CASE NO. 1498, OF THE UNITED STATES, EX rel. Barton Able,
ags't
ONE HUNDRED BARRELS OF DISTILLED SPIRITS, marked N. J., &c.
} No. 1498.

Orders of proclamation and defaults.

This day came the United States, by district attorney, and the marshal of said United States in and for said district having this day returned upon the warrant of arrest and monition issued in this case, that he had arrested the said 100 barrels of distilled spirits, marked N. J., and had given due notice, according to law, and the rules and practice of this court; on motion of the district attorney the court ordered that proclamation be made to all persons having anything to say why the said 100 barrels of distilled spirits should not be decreed to be forfeited to the said United States, and condemned and sold to answer the prayer of the information in said case, that they appear and make their allegations in that behalf, which proclamation was thereupon accordingly made.

Time allowed cl'm't to file answer.

Thereupon, on motion of James K. Knight, esquire, attorney for the claimant in this cause, the court ordered that said claimant have further time, until and including to-morrow, within which to file his answer to the information in said cause.

Def't's ent'd.

And no one else appearing, on the further motion of the district attorney, the court also ordered that the defaults of all persons who have not already filed their claims and answers in this cause, or obtained further time within which to file the same, be entered of record, which is here now accordingly done.

And on said fifth day of October, A. D. 1868, there was filed in the clerk's office of said district court, by the said claimant, his
19 answer to the information herein; which answer is in the words and figures following, to wit:

Answer of John Henderson.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

UNITED STATES, EX REL. BART. ABLE,
vs.
100 BARRELS DISTILLED SPIRITS.

In the district court of the United States within & for said district of Missouri. Case No. 1498.

And now comes John Henderson, of New Orleans, in the State of

Louisiana, by G. Woltman, his agent, claiming title to the one hundred barrels of distilled spirits in the information in the above entitled cause mentioned, and this claimant, for answer to the matters contained in said information, says that the allegation, in the several articles thereof, *are* not true; and of this he puts himself upon the country.

I. And for further answer, said claimant says: That he admits the seizure of said one hundred barrels of distilled spirits, as claimed in the first article of said information.

II. As to the second article in said information contained, claimant denies that after said spirits were made and manufactured, they were removed from the place where the same were made and manufactured, otherwise than into a bonded warehouse; and claimant denies that thereafter said distilled spirits were found elsewhere than in a bonded warehouse, as alleged, not having been removed from such warehouse according to law, and the tax imposed thereon by law not having been paid.

III. As to the third article in said information contained, claimant denies that said one hundred barrels of distilled spirits, being liable to the tax imposed thereon by law, were removed, after distillation, from the place where the same were distilled, otherwise than into a
20 bonded warehouse, as provided by law, the tax thereon not having been paid, as alleged.

IV. As to the fourth article in said information contained, claimant denies that said one hundred barrels of distilled spirits were removed from the place where distilled, with intent to defraud the United States of any tax being then and there imposed, as alleged.

V. As to the fifth article in said information contained, claimant says that he is informed that one N. Johnson, of the city of New Orleans, in the State of Louisiana, did, between the times in said article mentioned, in said city of New Orleans, carry on the business of distilling spirits, and that said one hundred barrels of distilled spirits were distilled by him, but denies that before said spirits were distilled, or while they were in the possession of said Johnson, said Johnson neglected and refused, from day to day, to make or cause to be made, true and exact entries in a book kept in such form as the Commissioner of Internal Revenue had prescribed, of the number of pounds and gallons of material used for the purpose of producing spirits; the number of gallons of spirits distilled; the number of gallons of spirits placed in warehouse, and the proof thereof; and the name and place of business or residence of the person to whom sold, as alleged.

VI. As to the sixth article in said information contained, claimant says that he is informed that said N. Johnson distilled said one hundred barrels of distilled spirits between the times in said article mentioned, in the city of New Orleans aforesaid, but denies that said Johnson, before said spirits were distilled, or afterwards, while the same were in his possession, neglected and refused, on the first, eleventh, and twenty-first days of each and every month, or within five days thereafter, to
21 render to the assessor or assistant assessor an account in duplicate, taken from his books, in the particulars recited in the fifth article of said information, of all the facts occurring after the last day of account preceding, as alleged.

VII. And claimant further says that said one hundred barrels of distilled spirits were purchased by him while the same were in a bonded warehouse, and that he, the claimant, paid the tax imposed thereon by law before he moved the same from said bonded warehouse: Wherefore the said claimant asks for the release of said one hundred barrels of dis-

tilled spirits, and avers that said one hundred barrels of distilled spirits were not forfeited by reason of anything in said information contained, as averred in the seventh article thereof.

(Signed) KNIGHT & ALLEN,
Att'ys for Claimant.

EASTERN DISTRICT OF MISSOURI, *ss:*

G. Waltman, agent of said claimant, John Henderson, makes oath, and says that said claimant does not reside in the eastern district of Missouri, but resides in the city of New Orleans, in the State of Louisiana, and that the matters and things stated in the foregoing answer are true, to the best of his knowledge, information, and belief.

(Signed) G. WOLTMAN.

Subscribed and sworn to by said affiant before me, at office, in St. Louis, Mo., this 5th day of October, A. D. 1868.

(Signed) F. A. WERNER,
Comm'r U. S. Circuit Court, Districts of Missouri.

And at a regular stated term of said district court, begun and holden at the city of St. Louis, in said district, on the first Monday, the 4th day of January, A. D. 1869, the following further proceedings took place in this case on said last-mentioned day, to wit:

Information in rem.

IN CASE NO. 1498, OF THE UNITED STATES, ex rel. B. Able, *ags't* 100 BARRELS OF DISTILLED SPIRITS. } No. 1498.

22 *Order to produce books, &c.*

This day came the United States, by district attorney, who presented to the court a notice in writing served upon Edmund T. Allen, esq., one of the attorneys for John Henderson, the claimant in the above-entitled case, notifying said attorney that a motion for and on behalf of the United States would be made on this day, for an order on said claimant to produce, on the trial of this case in this court, certain books, &c., hereinafter mentioned; and the court, on consideration of said notice, and on the motion of said district attorney, ordered that the said claimant be required to produce on the trial of the above-named case in this court the book or books kept by him as a wholesale dealer in distilled spirits, or either, from the first day of December, A. D. 1867, to the first day of August, A. D. 1868, with all the entries therein, as made by him or for him by others during the period aforesaid, and now believed to be in his possession, or within his control; that the same may be examined by said United States, and used in said trial; and if the said books are not produced, that the said claimants then and there show cause, if any they can, why the same are not so produced, under the penalties by law in such cases made and prescribed; and the court further ordered that a certified copy of this order be served upon said claimant, or his attorneys herein.

And at a regular stated term of said district , begun and holden at the city of St. Louis, in said eastern district of Missouri, on the third

Monday, the 17th day of the month of May, A. D. 1869, the following further proceedings took place in this case on said day, to wit:

IN CASE NO. 1498, OF THE UNITED STATES, ex rel. B. Able, *ag'st* 100 BARRELS DISTILLED SPIRITS, MARKED "N. J." } No. 1498.

23 *Stipulation as to agreed facts filed.*

This day came the parties, by their respective attorneys, and filed a stipulation in writing as to the state of facts agreed upon in this cause. And the stipulation, so filed by said parties, is in the words and figures following, to wit:

Stipulation as to agreed facts.

THE UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

THE UNITED STATES, EX REL., *vs.* ONE HUNDRED BARRELS DISTILLED SPIRITS, John Henderson, claimant. } No. 1498.

Information in rem.

In the above-entitled cause, it is hereby stipulated and agreed by and between the United States and John Henderson, the claimant—

1st. That John Henderson, claimant, purchased the said spirits while in a bonded warehouse of the United States at the city of New Orleans, Louisiana, after the same had been placed therein by the owners of the distillery at which the same were made, and that said claimant paid to the United States collector the taxes due on said spirits, and removed the same from said warehouse, according to law, without knowledge on the part of said Henderson, at any time before seizure, of any fraud on the part of the distiller, either actual or alleged; that Henderson was a purchaser, innocent and bona fide, and paid, himself, the tax on the spirits.

2nd. That said Henderson shipped the same to St. Louis, Missouri, and the said spirits were in his constructive possession at the time of seizure.

3rd. That the said spirits were manufactured and distilled at a certain distillery in the first collection district of the State of Louisiana, in in the months of May & June, 1868, run in the name of Nimrod Johnson, by the use and means of certain boilers, stills, & other vessels, of which said Johnson was superintendent and owner, and that each and all the facts averred in the fifth and sixth articles of the information in the above cause, averred as to a certain unknown person,
24 are true as alleged, as to the said Nimrod Johnson, & as to the said spirits.

4th. That the fourth article in said information is true, but that the said Henderson, claimant, subsequently to removal from the distillery, & before removal from the bonded warehouse, and before seizure, paid the tax on said spirits, and was a bona fide and innocent purchaser thereof.

5th. That Henderson, claimant, was not a purchaser from the United States, & the United States at no time sold said spirits.

(Signed) JOHN W. NOBLE,
U. S. Attorney, &c.

(Signed) EDMUND T. ALLEN,
Attorney for Claimant.

And at a regular stated term of this district court, begun and holden at the city of St. Louis, in said district, on the third Monday, the 17th day of May, A. D. 1869, the following further proceedings took place on Thursday, the 20th day of May, in said last-mentioned year, to wit:

IN CASE NO. 1498, OF THE UNITED STATES, ex rel. B. Able, *ag'st* 100 BARRELS DISTILLED SPIRITS. } No. 1498.

Order filing replication.

This day came the United States, by district attorney, and with the leave of the court filed its replication to the answer heretofore filed by the claimant in this cause. And said replication filed by the United States on said last-mentioned day is in the words and figures following, to wit:

Replication.

THE UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

U. S., EX REL., *vs.* 100 BARRELS DISTILLED SPIRITS, JNO. HENderson, claimant. } No. 1498.

25 And now comes the United States, by att'y, and as to the matters and things in the answer of said claimant, wherein and whereby he puts himself upon the country, says that said United States does the like.

(Signed) JOHN W. NOBLE,
U. S. Atty, &c.

And on the 18th day of June, A. D. 1869, there was filed in the clerk's office of this district court, a waiver of jury; which waiver of jury is in the words and figures following, to wit:

In the United States district court for the eastern district of Missouri, May term, 1869.

UNITED STATES *vs.* 100 BLS. DIST. SP'T. } Case No. 1498.

And now come the said parties by their respective attorneys, and *and*, by consent, waive a jury for the trial of the above actions.

(Signed) EDMUND T. ALLEN,
Attorney for Claimant Henderson.

(Signed) JOHN W. NOBLE,
U. S. Att'y.

And at said regular stated term of said district court, begun and held as aforesaid, the following further proceedings took place on said 18th day of the month of June, A. D. 1869.

IN CASE NO. 1498, OF THE UNITED STATES, EX rel. Barton Able, *ag'st* ONE HUNDRED BARRELS OF DISTILLED SPIRITS. } No. 1498.

Trial of case by the court.

This day came the United States by district attorney, and also the claimant herein by Edmund T. Allen, esquire, his attorney, and this cause having been regularly called for trial, and both parties being ready, the said parties, by attorneys, filed their stipulation in writing, waiving a jury for the trial of said cause. And thereupon the said cause was heard by the court, without the intervention of a jury, upon the pleadings and upon the stipulation of counsel in writing as to the agreed state of facts in said cause, filed herein, on the seventeenth day of May last.

26 *Submitted.*

And the arguments of counsel having been heard, the said cause was thereupon submitted to the court, which, not being fully advised in the premises, took time to consider of its findings upon the issues as made up in said cause.

And at said last-mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place on Tuesday, the 22nd day of the month of June, A. D. 1869, to wit:

IN CASE NO. 1498, OF THE UNITED STATES, EX rel. Barton Able, *ag'st* ONE HUNDRED BARRELS OF DISTILLED SPIRits, marked "N. J."

Finding of court and judgment.

This day came again the parties, by their respective attorneys, and this cause having been heretofore submitted to the court without the intervention of a jury, and the court having considered the pleadings and proofs and facts agreed upon therein, and being fully advised in the premises, finds the issues joined in said cause for the claimant. And judgment being asked upon such finding, the court thereupon adjudges and decrees that the information filed in this cause be, and the same is hereby dismissed, and the stipulation heretofore given by said claimant for the release of said distilled spirits, seized herein, be and the same is hereby cancelled.

Order for certif. of reasonable cause.

And the court further adjudges, orders, and decrees, that a certificate of reasonable cause, in justification of the officers making the seizure of the said one hundred barrels of distilled spirits herein be issued in said cause.

And at said last-mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this case on Thursday, the 1st day of the month of July, A. D. 1869, to wit:

27 IN CASE NO. 1498, OF THE UNITED STATES, EX rel. Barton Able, *ag'st* ONE HUNDRED BARRELS OF DISTILLED SPIRits, marked "N. J." } No. 1498.

Bill of exceptions filed, &c.

This day came the United States by district attorney, and filed its bill of exceptions in this cause, which is signed, sealed and ordered by the court to be made part of the record in said cause.

And the said bill of exceptions, filed by said district attorney, on said last-mentioned day, is in the words and figures following, to wit:

Bill of exceptions.

In the district court of the United States in and for the eastern district of Missouri.

THE UNITED STATES, EX REL., &C., *vs.* 100 BARRELS OF DISTILLED SPIRITS, JOHN Henderson, claimant. } No. 1498.

Information, &c.

Be it remembered that on the trial of this cause, at the May term, 1869, of said court, the same was submitted to the court without the intervention of a jury upon the following agreed state of facts, to wit: (copied on page ;) and no other testimony or evidence having been received or considered, the court held that the property in question was not forfeited, and the plaintiff was not entitled to recover; to which decision of the court in the premises the United States, by attorney, then and there excepted, and ask that this bill of exceptions may be signed and sealed and made a part of the record, which is accordingly done.

[SEAL.] (Signed) SAMUEL TREAT, *Judge.*

Clerk's certificate.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, Benjamin F. Hickman, clerk of the district court of the United States in and for the eastern district of Missouri, do hereby certify the writings hereto annexed to be a true copy of the record and proceedings in case No. 1498, A. D. 1869, of the United States of Amer-
28 ica, ex rel. Barton Able, against 100 Barrels of Distilled Spirits, marked "N. J.," commonly known as "highwines," John Henderson, claimant, as fully as the same remain on file and of record in said case, in my office.

In witness whereof, I hereunto subscribe my name, and affix the seal of said court at office in the city of St. Louis, in said district, this

twenty-fourth day of September, in the year of our Lord eighteen hundred and sixty-nine.

[SEAL.] BEN. F. HICKMAN,
Clerk of said Court.

And accompanying the foregoing transcript filed in said circuit court, was the writ of error by virtue of which said cause was brought into said circuit court, which writ of error is in the words and figures following, to wit:

Writ of error.

UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judge of the district court of the United States for the eastern district of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, at the May term thereof, 1869, between the United States of America and one hundred barrels highwines, in which case John Henderson is claimant, a manifest error hath happened, to the great damage of the said United States, as by its complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly,
29 you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of the United States for the districts of Missouri, together with this writ, so that you have the same at St. Louis, on the first Monday of October next, in the said circuit court, to be then and there held; that the record and proceedings aforesaid being inspected, the said circuit court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this seventh day of July, in the year of our Lord one thousand eight hundred and sixty-nine.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the districts of Missouri, dated as aforesaid.

BEN. F. HICKMAN,
Clerk C. C. U. S. Missouri Districts.

Allowed by—

SAMUEL TREAT, *Judge, &c.*

In obedience to the within writ of error, I hereby transmit to the said circuit court a transcript of the record and proceedings in the within-entitled cause.

BEN. F. HICKMAN,
Clerk U. S. District Court Eastern Dist. of Missouri.

At a regular stated term of the circuit court of the United States in and for the districts of Missouri, begun and holden at the city of St. Louis, in said districts, on the first Monday, the fourth day of October, A. D. 1869, the foregoing proceedings were had on Saturday, the thirtieth day of October, 1869, in the case of—

UNITED STATES, EX REL. BARTON ABLE, plaintiff in error,
ag'st
ONE HUNDRED BARRELS DISTILLED SPIRits, marked, &c., John Henderson, claimant and defendant in error.

Assignment of errors filed.

Writ of error from district court for eastern district of Missouri.

30 This day comes the United States, plaintiff in error, by district attorney, and files its assignment of errors in this case.

And said assignment of errors is in the words and figures following to wit:

Assignment of errors.

Error to U. S. dist. c'rt, eastern dist. Mo.

THE UNITED STATES OF AMERICA, PLAINTIFF in error,
vs.
JOHN HENDERSON, CLAIMANT 100 BARRELS distilled spirits.

In the circuit court of the United States for the districts of Missouri Oct. T., 1869.

And now comes the plaintiff in error, by John W. Noble, U. S. att'y, and say there is manifest error in the record, proceedings, & judgment & decree of the court below, in this—

1. That the court erred in the declaration of the law of the case.
2. That by the case made by the pleadings, testimony & the agreed case in the court below, there was error in the judgment of said court & the dismissal of said information.
3. That the judgment should have been for the United States, below.

Wherefore said pl'tiff in error prays that said judgment may be reversed & annulled.

JOHN W. NOBLE,
U. S. Att'y Eastern Dist. Mo.

And at said last-mentioned regular stated term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in said case on Monday, 1st day of November, 1869, to wit:

Writ of error from dist. court for eastern dist. of Missouri.

THE UNITED STATES, EX REL. BARTON ABLE, plaintiff in error,
ag'st
ONE HUNDRED BARRELS DISTILLED SPIRITS, marked &c., John Henderson, claimant and defendant in error.

31 *Joinder in error filed.*

This day comes the defendant in error, by attorney, and files his joinder in error in this case.

And said joinder in error filed in said case as aforesaid, is in the words and figures following, to wit:

Joinder in error.

In the United States circuit court for the districts of Missouri.

THE UNITED STATES, EX REL. BART. ABLE, plaintiff in error,
vs.
100 BBLS. DIST. SPIRITS, JOHN HENDERSON, claimant, defendant in error.

And now comes the defendant in error, by his attorney, and says there is no error in the record or proceedings, or in giving the judgment in the court below, and prays that said judgment may be affirmed with costs.

EDMUND T. ALLEN,
Att'y for Def'd't in Error.

And afterwards, at said last-mentioned stated term of said circuit court, begun and holden as aforesaid, the following further proceedings were had on Saturday, the sixth day of November, 1869, to wit:

Writ of error from dist. court for east'n district of Mo.

THE UNITED STATES, EX REL. BARTON ABLE, plaintiff in error,
ag'st
ONE HUNDRED BARRELS DISTILLED SPIRITS, marked &c., John Henderson, claimant and defendant in error.

Cause heard and submitted.

This day come the parties, by attorneys, and this case having been brought on for hearing, and the same having been fully heard, argued, and submitted to the court for a decree upon the record and proceedings in the district court of the United States for the eastern district of Missouri, and upon the case as made out and presented to this court, and the court not being fully advised of and concerning the premises, said case is by the court this day taken under advisement.

MEMORANDUM.—His Honor, Judge Treat, did not sit or take part in the proceedings in said case.

32 And at a regular stated term of said circuit court in and for the districts aforesaid, begun and holden at the city of Saint Louis on the first Monday, the 4th day, of the month of April, 1870, the following further proceedings were had on Saturday, the fourteenth day of May, 1870, to wit:

Writ of error from U. S. district court for eastern district of Missouri.

UNITED STATES, EX REL. BARTON ABLE, plaintiff in error,
ag'st
ONE HUNDRED BARRELS DISTILLED SPIRITS, John Henderson, claimant and defendant in error.

Agreement filed.

This day come the parties, by attorneys, and file an agreement in writing, signed by said attorneys, consenting and agreeing that the decree of this court on the appeal of this case from the distrfct court of the United States for the eastern district of Missouri may be entered in vacation as of the April term, 1870.

And said agreement, filed by said attorneys, is in the words and figures following, to wit:

Agreement.

Circuit court United States, districts of Missouri, April term, 1870.

THE UNITED STATES, EX REL. BARTON ABLE,
vs.
100 BBLS. SPIRITS, HENDERSON, CLAIMANT.

In the above-entitled cause, it is agreed, that the decree of the circuit court, on appeal from the eastern district of Missouri, may be entered in vacation, as of the April term, 1870.

CHESTER H. KRUM,
Att'y U. S. &c.
EDMUND T. ALLEN,
Att'y for Claimant, Henderson.

And afterwards, at a regular stated term of said circuit court, begun and holden at the city of Saint Louis, in said districts, on the first Monday, the 3rd day October, 1870, the following further proceedings were had on Wednesday, the 5th day of October, 1870, to wit:

33 The Honorable John F. Dillon, circuit judge of the United States for the eighth judicial circuit, having this day appeared in court, said judge and his honor, Judge Krekel, before whom certain appeal cases were argued and submitted at a former term of this court, made the following order and decree in the case of—

THE UNITED STATES, EX REL. BARTON ABLE, plaintiff in error,
ag'st
ONE HUNDRED BARRELS DISTILLED SPIRITS, marked, &c., John Henderson, claimant & defendant in error.

Decree affirming judgment of district court.

Writ of error from U. S. district court for the eastern district of Missouri.

This day come the parties, by attorneys, and this case having been brought on for hearing at a former term of this court, and the same having been fully heard, argued, and submitted for a decree, upon the record and proceedings in the district court of the United States for the eastern district of Missouri, and upon the case as made out and presented to this court, and the court being now fully advised of and con-

cerning the premises, it is finally ordered, adjudged, and decreed that the judgment, as rendered in this case by said district court be, and the same is hereby, affirmed.

34

35 UNITED STATES OF AMERICA,
Circuit Court for the Districts of Missouri, ss:

I, Benjamin F. Hickman, clerk of the circuit court of the United States in and for the districts of Missouri, do hereby certify the writing hereto annexed to be a transcript of the record and proceedings in case of The United States ex rel. Barton Able against 100 Barrels Distilled Spirits, John Henderson, claimant, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of St. Louis, in said districts, this twenty-ninth day of October, in the year of our Lord eighteen hundred and seventy.

[SEAL.] BEN. F. HICKMAN,
Clerk of said Court.

(Indorsed:) No. . United States circuit court, districts of Missouri. The United States, ex rel. Barton Able, against 100 Barrels Distilled Spirits, John Henderson, claimant. Duly certified transcript of the record and proceedings in the above-entitled cause.

36 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the circuit court of the United States for the districts of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, at the October term 1870 of said court, between The United States of America and One Hundred Barrels Distilled Spirits, marked, &c., in which case John Henderson is claimant, a manifest error hath happened, to the great damage of the said United States, as by its complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, this fifth day of October, in the year of our Lord one thousand eight hundred and seventy.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the districts of Missouri, dated as aforesaid.

BEN. F. HICKMAN,
Clerk C. C. U. S. Missouri Districts.

Allowed by—

SAMUEL TREAT, *Judge.*

37 In obedience to the within writ of error, I hereby transmit to the Supreme Court of the United States a transcript of the record and proceedings in the within-entitled cause.

Given under my hand this twenty-ninth day of October, A. D. 1870.

BEN. F. HICKMAN,
Clerk of the Circuit Court of the United States for the Districts of Missouri.

(Indorsed:) U. S. circuit court, districts of Missouri. The United States, pl'ff in error, ag'st One Hundred Barrels Distilled Spirits, marked, &c., John Henderson, claimant & defendant in error. Writ of error. Filed 5th October, 1870. Ben. F. Hickman, clerk.

38 The United States of America to John Henderson, claimant, in the case of the United States, ex rel. Barton Able, against One Hundred Barrels Distilled Spirits, marked, &c., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the districts of Missouri, wherein The United States of America is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff of error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel Treat, one of the judges of the circuit court of the United States for the districts of Missouri, this fifth day of October, in the year of our Lord one thousand eight hundred and seventy.

SAMUEL TREAT.

39 Service of within citation accepted this thirty-first day of October, A. D. 1870.

EDMUND T. ALLEN,
Attorney for Henderson, Claimant.

(Indorsed:) No. . Supreme Court U. S., December T., 1870. The United States ex rel. Barton Able, pl'ff in error, vs. 100 Barrels Distilled Spirits, marked, &c., John Henderson, cl'm't, def't in error. Citation.

(Indorsement on cover:) No. 303. The United States, plaintiffs in error, vs. One Hundred Barrels Distilled Spirits, &c., John Henderson, claimant. Missouri C. C. U. S. Filed 22d November, 1870.

In the Supreme Court of the United States.

DECEMBER TERM, 1871.

THE UNITED STATES, *Plaintiffs in Error,*
vs.
JOHN HENDERSON, *Defendant in Error.*
} No. 104.

In error to the Circuit Court of the United States for the Eastern District of Missouri.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

DECEMBER TERM, 1871.

THE UNITED STATES, *Plaintiffs in Error*,
vs.
JOHN HENDERSON, *Defendant in Error*. } No. 104.

In error to the Circuit Court of the United States for the Eastern District of Missouri.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This is an information to enforce forfeiture against one hundred barrels of distilled spirits, filed on the 7th of September, 1868.

The fourth, fifth, and sixth counts of the information are as follows:

"*Fourth.* That the said one hundred barrels of spirits were manufactured at some place within the United States to said attorney unknown, and between the 1st day of September, A. D. 1866, and the date of said seizure, by some person or persons to said attorney unknown, and were then and there goods and commodities on which a tax was then and there imposed by the provisions of law, and the same were removed from the place where distilled with intent to defraud the United States of such tax, the same being then and there unpaid, contrary to the form of the statutes of said United States in such case made and provided."

"*Fifth.* That said spirits were made and manufactured at some place within the United States to said attorney unknown, between the first day of September, A. D. 1866, and the date of said seizure, by the use of certain boilers, stills, and other vessels of which said unknown person or persons then and there had superintendence; and that during the time said unknown person or persons carried on the business aforesaid, and both before said spirits were distilled and while they were in his or their possession, said unknown person or persons neglected and refused from day to day to make, or cause to be made, true and exact entry in a book, kept in such form as the Commissioner of Internal Revenue had prescribed, of the number of pounds and gallons of material used for the purpose of producing spirits; the number of gallons of spirits distilled; the number of gallons of spirits placed in warehouse, and the proof thereof; and the number of gallons sold, with the proof thereof; and the name and place of business or residence of the person to whom sold, contrary to the form of the statutes of said United States in such case made and provided," &c.

"*Sixth.* That the said spirits were made and manufactured at some place within the United States to said attorney unknown, between the 1st day of September, A. D. 1866, and the date of said seizure, by some person or persons to said attorney unknown, by the use and means of certain stills, boilers, and other vessels, of which said unknown person or persons then and there had superintendence; and said person or persons did then and there, both before said spirits were distilled and afterwards, while the same were in his possession neglect and refuse, on the first, eleventh, and twenty-first days of each and every month, or within five days thereafter, to render to the assessor or assistant assessor an account in duplicate, taken from his or their books in the particulars hereinbefore recited in the next pre-

ceding article of this information, of all the facts occurring after the last day of account preceding, contrary to the form of the statutes of the United States in such case made and provided, whereby, and by force of said statutes, the said property became and is forfeited to the uses in said statutes specified."

The defendant in error appeared as claimant in the district court and filed an answer putting in issue the material matters alleged in the information, and further alleged that the said spirits "were purchased by him while the same were in a bonded warehouse, and that he, the claimant, paid the tax imposed thereon by law before he moved the same from said bonded warehouse; wherefore," &c.

A stipulation was filed in the district court waiving jury trial, and the case was heard by the judge upon the following facts, agreed to by the parties according to stipulation filed before the trial:

"1st. That John Henderson, claimant, purchased the said spirits while in a bonded warehouse of the United States at the city of New Orleans, Louisiana, after the same had been placed therein by the owners of the distillery at which the same were made, and that said claimant paid to the United States collector the taxes due on said spirits, and removed the same from said warehouse, according to law, without knowledge on the part of said Henderson, at any time before seizure, of any fraud on the part of the distiller, either actual or alleged; that Henderson was a purchaser, innocent and *bona fide*, and paid, himself, the tax on the spirits.

"2d. That said Henderson shipped the same to St. Louis, Missouri, and the said spirits were in his constructive possession at the time of seizure.

"3d. That the said spirits were manufactured and

distilled at a certain distillery in the first collection district of the State of Louisiana in the months of May and June, 1868, run in the name of Nimrod Johnson, by the use and means of certain boilers, stills, and other vessels of which said Johnson was superintendent and owner, and that each and all of the facts averred in the fifth and sixth articles of the information in the above cause, averred as to a certain unknown person, are true as alleged, as to the said Nimrod Johnson, and as to the said spirits.

"4th. That the fourth article in said information is true, but that the said Henderson, claimant, subsequently to removal from the distillery and before removal from the bonded warehouse, and before seizure, paid the tax on said spirits, and was a *bona fide* and innocent purchaser thereof.

"5th. That Henderson, claimant, was not a purchaser from the United States, and the United States at no time sold said spirits."

The district court gave judgment for the claimant, and the case was taken by writ of error to the circuit court, where the judgment of the district court was affirmed by Judges Dillon and Krekel.

United States *vs.* One Hundred Barrels of Spirits, 1 Dillon, C. C. 49, *S. C.*, 2 Abbott, U. S., 305.

The case was thereupon brought by writ of error to this court.

The fourth count in the information is based upon section 14 of the act of July 13, 1866. (14 Statutes at Large, 151.)

The fifth and sixth counts are based upon section 31 of the same act, (*ibid.*, 151,) and section 25 of the act of March 2, 1867. (*Ibid.*, 483.)

Section 31 requires the distiller to keep a certain book, and make certain entries therein, and also to make certain reports, which it is admitted that the distiller of the spirits seized did not do.

Section 25 of the act of 1867 provides:

"That the owner, agent, or superintendent of any still, * * * who shall neglect or refuse to make true and exact entry and report of the same, or to do or cause to be done any of things by law required to be done, concerning distilled spirits, shall, in addition to other fines and penalties now by law provided, forfeit, for every such neglect or refusal, all the spirts made by or for him, and all the vessels used in making the same, and the stills, boilers, and other vessels used in distillation, and all materials fit for use in distillation found on the premises, together with," &c.

The counsel for the Government insist that the circuit court erred—

First. In not holding the spirits to be forfeited under the fourth count in the information.

Secondly. In not holding said spirits to be forfeited under the fifth and sixth counts in the information.

ARGUMENT.

Although the act of 1865, in regard to waiving jury trial applies only to the circuit courts, yet as the facts in this case were agreed and incorporated into the record in the district court, and judgment therein was rendered on them, that judgment is reviewable on writ of error as in the case of a special verdict.

Suydam *vs.* Williamson, 20 How., 427.

Campbell *vs.* Boyreau, 21 How., 224.

Kearney *vs.* Case, December term, 1870.

If these spirits were liable to forfeiture under any count of the information, the forfeiture attached at the moment of the commission of the offence, and can be enforced against the offending property in the hands of an innocent purchaser.

United States *vs.* Grundy, 3 Cranch, 338.
United States *vs.* 1960 Bags of Coffee, 8 Cranch, 398.
Wood *vs.* The United States, 16 Pet., 342.
Caldwell *vs.* The United States, 8 How., 366.
United States *vs.* Fifty-six Barrels of Whiskey, 1 Abbott, U. S., 93.
Robert *vs.* Witherhead, 12 Mod., 92.
Wilkins *vs.* Despard, 5 T. R., 112.

I.

The agreed facts admit the truth of the allegations in the fourth count, namely, that the spirits were removed from the distillery "with intent to defraud the United states of said tax, the same being then and there unpaid." But it appears that they were removed from the distillery into the United States bonded warehouse, and the learned circuit judge, in his able opinion in this case, held that, as the overt act alleged, namely, the removal, was rightful, "it is difficult to see how it could have been made to defraud the United States of the tax, and a mere intent to defraud, formed or existing in the mind of the distiller, which intention has never been executed or attempted to be, is not made a

ground of forfeiture. The only execution or attempt to execute the unlawful intent alleged, viz: to defraud the United States of the tax on the spirits, is the removal of the spirits by the distiller to the warehouse of the United States, which removal was a legal and not an illegal act." (1 Dillon, 59.)

The fallacy of this reasoning lies in assuming it to be impossible that one step in an attempt to defraud the Government of the tax due upon those spirits, could be their removal to a bonded warehouse. In order to make this argument upon the facts agreed in this case, even admitting that the assumption is in fact true, the court must judicially know that there is such an impossibility. But the truth is, that not only can the court not know that there is such an impossibility, and for that reason set aside the admissions made by the claimant in this case, but it is notorious that spirits have often been removed to United States bonded warehouses from distilleries in accordance with conspiracies between distillers and warehousemen in order to defraud the Government by having the spirits secretly drawn off from the barrels; and under agreements with the revenue officers to have them released upon worthless security without payment of the tax. If, therefore, a distiller should remove spirits from his distillery to a bonded warehouse for the purpose of accomplishing any such fraudulent conspiracy, as either of these would be, will it be contended that the spirits are not forfeited to the Government by reason of the fraud simply because the

overt act in itself, and separate and apart from the in tent, is innocent? The agreed facts admit the fraudulent intent; that it was for the purpose of defrauding the Government that the spirits were removed, and thus bring the case exactly within the words of the fourth section of the act of 1866, and render them liable to forfeiture, unless the language of that section is limited by the language of section 45. (14th Stats. at Large, 163.)

Section 45 is widely different from section 14. The gist of section 14 is the intent with which the spirits are removed—forfeiture only taking place where they are removed, deposited, or concealed in any place with intent to defraud the United States. In section 45 the intent with which the removal is made is immaterial, if they are removed elsewhere than to a bonded warehouse. Thus an information can be founded on section 45, however innocent may have been the intention of the parties; but, when founded on section 14, the intent to defraud the Government becomes essential. The fact that an information for fraudulently removing spirits elsewhere than to a bonded warehouse may be founded either on section 14 or section 45, does not show any conflict between the two sections, or that the one limits the other. Such cumulative remedies are very often provided in revenue laws.

The Distilled Spirits, 11 Wallace, 356, 364, 365.

II.

The fifth and sixth counts allege, that the distiller, both before said spirits were distilled, and while they were in his possession, neglected and refused to make the entries in the books and to make the reports required by section 31 of the act of 1866, and the Government contends that, therefore, the spirits became forfeited under the twenty-fifth section of the act of March 2, 1867, *ubi supra*.

Before examining this question, it may be well to refer to an objection raised by the defendant in error in the court below, but therein decided in favor of the Government, namely, whether this section was repealed by section 5 of the act of March 31, 1868, (15 Stats. at Large, 59,) which was in force at the time these spirits were manufactured. The court has had occasion to discuss the question of the repeal of provisions of the revenue laws by implication so fully of late, that it is not necessary to enlarge upon the subject now. A careful examination of the two sections shows that there is no conflict between them, and nothing to indicate that Congress in enacting the last one intended to repeal the provisions of the previous one, and to deprive the Government of the remedies therein given. Section 5 of the act of 1868 is meant to punish attempts to defraud the Government of the tax upon distilled spirits. Section 25 of the act of 1867 punishes neglect or refusal to do any of the things required to be done concerning dis-

tilled spirits without regard to the intent. The consequence is that the two sections can stand well together.

Stockwell *vs.* The United States, decided at the present term.

The United States *vs.* Sixty-seven Packages of Dry Goods, 17 How., 85.

Dickson *vs.* The Queen, 11 H. L. Cas., 174.

Regina *vs.* Wigg, 2 Salk., 460.

Jennings *vs.* The Commonwealth, 17 Pick., 80.

Assuming, therefore, that section 25 of the act of March 2, 1867, had not been repealed, the question recurs, whether the forfeiture thereby inflicted extends to distilled spirits which were manufactured or in the possession of the distiller while he neglected or refused to make the entries in the books, and the reports to the revenue officers therein required, but which, before seizure, had been removed to the bonded warehouse and sold to an innocent purchaser. The language of the section (rejecting punctuation) is:

"That the owner agent or superintendent of any still * * * * shall in addition to other fines and penalties now by law provided forfeit for every such neglect or refusal all the spirits made by or for him and all the vessels used in making the same and the stills boilers and other vessels used in distillation and all materials fit for use in distillation found on the premises," &c.

It will be perceived that the words "in distillation" might be omitted where they are first inserted, and the meaning of the sentence would be the same without them: "the stills and boilers and other vessels used and

all materials fit for use in distillation found on the premises;" that is, it constitutes but one clause.

The construction of the statute turns upon the question of how much of the previous part of the section is limited or qualified by the words "found on the premises." The learned judge below construed this clause as limiting the entire forfeiture imposed; and, consequently held that spirits not on the premises, and not belonging at the time of seizure to the distiller, were not included within the forfeiture.

It is an elementary principal in the construction of statutes that a limiting clause is ordinarily to be confined to the last antecedent, unless there be something in the subject-matter of the statute which requires a different construction.

Dwarris on Statutes, (2d ed.,) 590, 591.

Cushing *vs.* Worrick, 9 Gray, 382.

Applying this rule here, the words "found on the premises" must be confined at most to the two classes of articles last mentioned, and perhaps simply to "the materials fit for use in distillation." Force is then given to the words "and all vessels used in making the same," which otherwise become of no effect. And that this is not only the proper technical construction, but is also the one which effectuates the intention of Congress, would seem to be apparent from the fact that otherwise spirits made by or for the distiller violating the provisions of the act and belonging to him, but deposited elsewhere, would escape forfeiture; for either the for-

feiture must extend to all spirits made by or for the distiller, and the forfeiture take effect at once, so as to vest title to the forfeited article in the United States, or else it must be confined to the spirits actually in the distillery, and not be extended to other spirits deposited elsewhere, although belonging to the distiller, and although it was actually in respect of them that he neglected to obey the law.

This section, therefore, must be construed as extending a forfeiture to all the spirits in respect of which the law has been violated; and the fifth count in the information (which is admitted by the stipulation to be true) shows that the law was not complied with in respect of these. It is there alleged that the spirits were manufactured between September 1, 1866, and September 1, 1868, "by the use of certain boilers, stills, and other vessels, of which said unknown person or persons then and there had the superintendence; and that during the time said unknown person or persons carried on the business aforesaid, and both before said spirits were distilled and while they were in his or their possession, said unknown person or persons neglected and refused from day to day to make or cause to be made true and exact entry, &c." Whether there is any ambiguity in the language of the sixth count, in this respect, thus becomes immaterial.

The learned judge below based an argument in support of his construction of the statute upon the provisions of the fifth section of the act of March 31, 1868,

and upon the provisions of the act of July 20, 1868, limiting forfeiture in similar cases to spirits belonging to the distiller, and not extending it to those which had subsequently to the forfeiture being incurred been sold to any such purchaser. But an equally strong argument, to say the least, can be found upon these later provisions, that they were intended to remedy in some respects the harshness of the former acts, as that they indicate what those former acts meant, since there are many cases under the revenue laws where innocent purchasers are not protected from the loss of goods bought by them under circumstances where they must have been ignorant of the fraud perpetrated. It is not safe to endeavor, by reference to the general policy of the Government, as indicated by the revenue laws, to assume that such a forfeiture was not intended in the present case.

Hadden *vs.* The Collector, 5 Wallace, 107.

III.

It was argued by the learned counsel for the claimant in the court below, that by accepting the taxes assessed on these spirits, and surrendering them to the claimant, the United States waived any rights acquired under the forfeiture. The obvious answer is, that the revenue officers had no power to bind the Government by any such waiver, and besides, no such waiver could be presumed unless there had been proof that they were

aware that the spirits had incurred forfeiture by former acts of the distiller at the time they accepted the tax.

The same argument applies to the objection that the Government is estopped to assert its forfeiture, even assuming (what is denied) that the doctrine of estoppel can be applied to the Government at all, and especially to a case like the present.

Freeman *vs.* Cooke, 2 Exch., 654, 662, 663.

Hawes *vs.* Marchant, 1 Curt , C. C., 136, 144.

B. H. BRISTOW,
Solicitor General.

C. H. HILL,
Ass't Attorney General.

IN THE

Supreme Court of the United States.

DECEMBER TERM, 1871.

THE UNITED STATES, *Plaintiffs in Error*,
vs.
JOHN HENDERSON, *Defendant in Error*. } No. 104.

In error to the Circuit Court of the United States for the Eastern District of Missouri.

BRIEF FOR THE DEFENDANT IN ERROR.

IN THE

Supreme Court of the United States.

DECEMBER TERM, 1871.

THE UNITED STATES, PLAINTIFFS IN ERROR,
vs.
JOHN HENDERSON, DEFENDANT IN ERROR. } *No.* 104.

In error to the Circuit Court of the United States for the Eastern District of Missouri.

BRIEF FOR THE DEFENDANT IN ERROR.

This case was brought into this court by writ of error to the circuit court of the United States for the eastern district of Missouri, wherein the judgment of the district court was affirmed. The facts on which the case is founded, as exhibited in the record, may be stated briefly, as follows:

First. The hundred barrels of spirits in controversy were manufactured during the months of May and June, 1868, within the first collection district of the State of Louisiana, by Nimrod Johnson, (see 3d article of agreed statement, Record, p. 14,) and subsequently were by said Johnson removed to a bonded warehouse of the United States, situated in said collection district.

Second. That John Henderson, the defendant in error, purchased said spirits while in said bonded warehouse, paid to the United States collector the full amount of the tax thereon, (see article fourth of agreed statement, p. 14,) and thereafter shipped said spirits to St. Louis, Missouri, where they were seized by the authorities of the United States.

The fourth, fifth, and sixth counts of the information on which the seizure was made were as follows:

"*Fourth.* That the said one hundred barrels of spirits were manufactured at some place within the United States to said attorney unknown, and between the 1st day of September, A. D. 1866, and the date of said seizure, by some person or persons to said attorney unknown, and were then and there goods and commodities on which a tax was then and there imposed by the provisions of law, and the same were removed from the place where distilled with intent to defraud the United States of such tax, the same being then and there unpaid, contrary to the form of the statutes of said United States in such case made and provided.

"*Fifth.* That said spirits were made and manufactured at some place within the United States to said attorney unknown, between the 1st day of September, A. D. 1866, and the date of said seizure, by the use of certain boilers, stills, and other vessels, of which said unknown person or persons then and there had superintendence; and that during the time said unknown person or persons carried on the business aforesaid, and both before said spirits were distilled and while they were in his or their possession, said unknown person or persons neglected and refused from day to day to make, or cause to be made, true and exact entry in a book, kept in such form as the Commissioner of Internal Revenue had prescribed, of the number of pounds and gallons of material used for the purpose of producing spirits; the number of gallons of spirits distilled; the number of gallons of spirits placed in warehouse, and the proof thereof; and the number of gallons sold, with the proof thereof; and the name and place of business or residence of the person to whom sold, contrary to the form of the statutes of said United States in such case made and provided," &c.

"*Sixth.* That the said spirits were made and manufactured at some place within the United States to said attorney unknown, between the 1st day of December, A. D. 1866, and the date of said seizure, by some person or persons to said attorney unknown, by the use and means of certain stills, boilers, and other vessels, of which said nuknown person or persons then and there had superin-

tendence; and said person or persons did then and there, both before said spirits were distilled and afterwards, while the same were in his possession, neglect and refuse, on the first, eleventh, and twenty-first days of each and every month, or within five days thereafter, to render to the assessor or assistant assessor an account in duplicate, taken from his or their books, in the particulars hereinbefore recited in the next preceding article of this information, of all the facts occurring after the last day of account preceding, contrary to the form of the statutes of the United States in such case made and provided, whereby, and by force of said statutes, the said property became and is forfeited to the uses in said statutes specified."

The parties in litigation filed a stipulation in the district court, waiving a trial by jury, and the case was heard on a statement of facts agreed to by the parties, in accordance with the following stipulations, filed before the trial:

"1st. That John Henderson, claimant, purchased the said spirits while in a bonded warehouse of the United States, at the city of New Orleans, Louisiana, after the same had been placed therein by the owners of the distillery at which the same were made, and that said claimant paid to the United States collector the taxes due on said spirits, and removed the same from said warehouse, according to law, without knowledge on the part of said Henderson, at any time before seizure, of any fraud on the part of the distiller, either actual or alleged; that Henderson was a purchaser, innocent and *bona fide*, and paid, himself, the tax on the spirits.

"2d. That said Henderson shipped the same to St. Louis, Missouri, and the said spirits were in his constructive possession at the time of seizure.

"3d. That the said spirits were manufactured and distilled at a certain distillery in the first collection district of the State of Louisiana in the months of May and June, 1868, run in the name of Nimrod Johnson, by the use and means of certain boilers, stills, and other vessels of which said Johnson was superintendent and owner, and that each and all the facts averred in the fifth and sixth

articles of the information in the above cause, averred as to a certain unknown person, are true as alleged, as to the said Nimrod Johnson, and as to the said spirits.

"4th. That the fourth article in said information is true, but that the said Henderson, claimant, subsequently to removal from the distillery and before removal from the bonded warehouse, and before seizure, paid the tax on said spirts, and was a *bona fide* and innocent purchaser thereof.

"5th. That Henderson, claimant, was not a purchaser from the United States, and the United States at no time sold said spirts."

In the appeal to the Supreme Court, it is alleged by the plaintiffs in error that the circuit court erred:

"*First.* In not holding the spirits to be forfeited under the fourth count in the information."

"*Second.* In not holding the spirits to be forfeited under the fifth and sixth counts in the information."

The plaintiffs in error insist that the spirits in question were forfeited to the United States under the statutes that provide for the assessment and collection of Internal revenue taxes.

The rule of this court for construing the revenue laws is now well settled. While the court holds that these laws "are not penal, in the sense that requires them to be construed with great strictness in favor of the defendant," but "that they are rather to be regarded as remedial in their character, and intended to prevent fraud, suppress public wrong, and promote public good," and that "they should be so construed as to carry out the intention of the legislature in passing them and most effectually accomplish its objects." (3 Wall., 114.)

In applying this rule it should be borne in mind that the object of all these revenue laws is to collect the tax; and any construction that would result in defeating that object must be in conflict with the rule.

In the case of Bennet *vs.* Hunter, (9 Wall. 326,) this court gave its construction of the fourth section of the act of July 7, 1862, (12 Statutes at Large, 294,) a highly penal statute, in which it is provided: "That the title of, in, and to every piece or parcel of land upon which said tax has not been paid as above provided *shall thereupon become forfeited* to the United States."

In construing this statute, the Chief Justice, delivering the opinion of the court, said: "It must be remembered that the primary object in the act was undoubtedly revenue, * * * and it seems unreasonable to give to an act considered as a revenue measure a construction which would defeat the right of the owner to pay the amount assessed, and relieve his land from the lien."

Speaking of the claim set up by the plaintiffs in that case, that forfeiture worked *eo instanti* on the failure of the owner to pay the tax within the required time, the Chief Justice said: "It is certainly proper to assume that an act of sovereignty so highly penal is not to be inferred from language capable of any milder construction." This principle of interpretation is clearly applicable to the cause now before the court.

ARGUMENT.

I.—Did *the circuit court err in not holding the spirits to be forfeited under the fourth count in the information?* The alleged forfeiture under this count is based by the plaintiff in error upon section 14 of the act of July 13, 1866, (14 Statutes at Large, 151.)

1. But section fourteen does not apply to the removal of spirits.

The first thirteen sections of the act, which cover 53 pages of the statutes, relate to the levying and collection of taxes on many hundreds of articles, but not to the tax on spirits. Section fourteen manifestly applies to the removal from the place of manufacture and to the deposit

or concealment of articles named in the statute, and not otherwise provided for. The sections from the twenty-first to the forty-fifth inclusive relate to the tax on distilled spirits, the manufacture of which is peculiar, and the tax on which is exceptional in amount and is specially protected against fraud. Section forty-five, which concludes this portion of the statute, provides a special and different penalty for the removal of spirits in violation of the law. Other and different penalties are provided for the unlawful removal of fermented liquors (section 54) and of tobacco, (section 91 of the act of 1864 as amended by the act of July 13, 1866,) showing that Congress specially provided for these articles, and thus excepted them from the operation of section fourteen.

In further confirmation of the view it should be noticed that the statute generally took effect August 1, 1866, (see section 61,) but that the provisions relating to distilled and fermented liquors did not take effect till Septemper 1, 1866. (See section 70.)

Sec. 45 (14 Stat. at Large, 163) is therefore the law which applies to the allegation in the fourth count of the information. But the forfeiture prescribed in section 45 applies to the removal of spirits "from the place where the same are manufactured *otherwise than into a bonded warehouse*," and it is admitted that the removal of these spirits set forth in the fourth count was into a bonded warehouse of the United States. Hence the forfeiture prescribed in section 45 does not apply to the spirits in question.

2. If it be held that section 14 applies to the removal of spirits, still there was no forfeiture in this case. The forfeiture provided in that section applies only to commodities "removed, or deposited, or concealed in any place with intent to defraud the United States of the tax thereon." Section 28 provides for the establishment of bonded warehouses to which spirits may be re-

moved, and the object of such warehouses is declared to be "to secure the payment of the internal revenue tax thereon."

The fourth count of the information is admitted, in the written stipulation, to be true, and one of its allegations is that the spirits were removed "from the place where distilled, with intent to defraud the United States of the tax." This allegation is rendered wholly nugatory by the fact, admitted by both parties in the first article of the written stipulation, that the removal here referred to was made by the distiller himself to a bonded warehouse of the United States. This act was legal, was in pursuance of the statute, was the very course prescribed by the law "to secure the payment of the tax;" and the admission of fraudulent intent, if it be anything more than an oversight of the parties to the written stipulation, can have no power whatever to work a forfeiture.

The learned counsel for the government, in reviewing the able opinion of the circuit court on this point, (2 Abbott's U. S. Rep, 305,) say:

"The fallacy of this reason lies in assuming it to be impossible that one step in an attempt to defraud the Government of the tax due upon those spirits could be their removal to a bonded warehouse. In order to make this argument upon the facts agreed in this case, even admitting that the assumption is in fact true, the court must judicially know that there is such an impossibility. But the truth is, that not only can the court not know that there is such an impossibility, and for that reason set aside the admissions made by the claimant in this case, but it is notorious that spirits have often been removed to United States bonded warehouses from distilleries in accordance with conspiracies between distillers and warehousemen in order to defraud the Government by having the spirits secretly drawn off from the barrels; and under agreements with the revenue officers to have them released upon worthless security without payment of the tax." (Brief for U. S., p. 7.)

This argument supposes a conspiracy, of which there is no proof whatever. No conspiracy is alleged in the information, nor in the agreed statement of facts. On the contrary, the record shows that all the proceedings in connection with the removal of the spirits to the bonded warehouse were regular, and this court must assume that all the officers of the Government performed their duties incident to that removal in accordance with the law. It must be assumed that, under the provisions of section twenty-nine, (14 Statutes at Large, 155,) the inspector for the distillery where these spirits were manufactured had taken an account of all of the "substances to be used" in producing them, had "inspected, gauged, and proved" them, and that, when the spirits were placed in the bonded warehouse, "an entry therefor was immediately made and signed by the owner" thereof, and that an endorsement was made thereon by the United States inspector of said bonded warehouse certifying "that the spirits mentioned have been duly inspected and received in said bonded warehouse," and that such entry and certificate was "filed with the collector of the district." These proceedings must be assumed in the absence of any proof, or even allegation, to the contrary. The record shows none. And the fact that when the defendant in error purchased the spirits he paid the full amount of the tax, in accordance with the provisions of section forty, and received the collector's certificate of such payment, is conclusive that there was no such conspiracy.

II.

Did the circuit court err in not holding the spirits to be forfeited under the fifth and sixth counts in the information?

The counsel for the United States base these counts on section 31, (14 Stat. at Large, 151,) and claim forfeiture under section 25 of the act of March 2, 1867, (Ibid, 483.)

The ground of this alleged forfeiture is the failure of distiller of the spirits to make the entries required by law, in the book prescribed by the Commissioner of Internal Revenue, and to make tri-monthly reports from said book.

From the fifth and sixth counts it does not appear that this failure to comply with the law occurred in connection with the manufacture of the spirits in controversy. On the contrary, the language employed excludes such a conclusion. The fifth count declares that the failure occurred "both before said spirits were distilled, and while they were in his (the manufacturer's) possession." The time of the failure is described in the sixth count, in these words: "both before said spirits were distilled and afterwards, while the same were in his possession."

The distiller's first neglect occurred at a time "before these spirits were distilled;" but whether that time was a day or a year before the distillation the information does not state. His second neglect was after they were distilled. In both counts, there is, manifestly, a careful avoidance of any allegation that the law was violated in connection with the manufacture of these spirits. The only violation of law on the part of the distiller, which may have affected the spirits in controversy, was his neglect to make his proper entries, as a distiller, at some time after these spirits were distilled, but while they were yet in his possession. If any forfeiture was incurred, it must have been on this ground.

The counsel for the Government claim forfeiture under section 25 of the act of 1867, (14 Stat. at L., 483,) which provides:

"That the owner, agent, or superintendent of any still, * * * who shall neglect or refuse to make true and exact entry and report of the same, or to do or cause to be done any of the things by law required to be done, concerning distilled spirits, shall, in addition to other fines

and penalties now by law provided, forfeit, for every such neglect or refusal, all the spirits made by or for him, and all the vessels used in making the same, and the stills, boilers, and other vessels used in distillation, and all materials fit for use in distillation found on the premises, together with the sum of five hundred dollars for each offence, to be recovered, with costs of suit, and shall be deemed guilty of a misdemeanor, and be subject to imprisonment for a term not exceeding one year."

First. The question has been considered in the court below, and is here for review—whether this twenty-fifth section has not been repealed or materially modified by section 5 of the act of March 31, 1868, (15 Statutes at Large, 59,) which was in force when these spirits were manufactured, and which is in these words:

"That every person engaged in carrying on the business of a distiller who shall defraud, or attempt to defraud, the United States of the tax on spirits distilled by him, or any part thereof, shall forfeit the distillery and distilling apparatus used by him, and all distilled spirits and all raw materials for the production of distilled spirits found in the distillery and on the distillery premises, and shall, on conviction, be fined not less than five hundred dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than three years."

Admitting the principle that the law does not favor repeals by implication, particularly in revenue statutes, still the grounds for regarding the later statute as a repeal of section 25 are very strong. Both sections prescribe penalties for violation of the laws relating to distilled spirits, and there is nothing in the language of section 5 to indicate that its penalties are additions to the penalties of section 25. Section 25 carries in its own terms the proof that it was not intended to repeal section 31 of the act of 1866, to which it is supplementary; for its penalties are declared to be "in addition to other fines and penalties now by law provided." No such

clause appears in section 5 of the act of 1868. A comparison of the penalties of the two sections will show how fully the latter supersedes the former. The forfeiture provided in section 25 applies to:

First. All the spirits made by the distillery.

Second. All the vessels used in making the same.

Third. Stills, boilers, and other vessels used in distillation.

Fourth. All materials fit for use in distillation.

To which are added a fine of five hundred dollars and imprisonment not exceeding one year.

The forfeiture provided in section 5 of the act of March 31, 1868, extends to:

First. The distillery.

Second. The distilling apparatus.

Third. All the distilled spirits.

Fourth. All raw materials for the production of distilled spirits.

To which are added a fine of not less than five hundred nor more than five thousand dollars and imprisonment not less than six months nor more than three years.

It will be seen that the forfeiture extends to precisely the same objects, with only this difference: In the later statute the terms used are more general and comprehensive. For example, the language of section 25 is: "the still, boilers, and other vessels used in distillation." In section 5 the language is: "the distillery and distilling apparatus"—words that include all the corresponding terms of the earlier section, and more.

Again, section 25 extends the forfeiture to all materials fit for use in distillation. In section 5 it is "all raw material for the production of distilled spirits"—a broader definition, which leaves no room for raising the question of the fitness of material for use in distillation.

Again, in section 25, the fine is limited to five hundred dollars. In section 5 of the latter statute, it is not less

than five hundred nor more than five thousand dollars. So, also, the imprisonment in section 25 is limited to one year, while in section 5 the least term is six months and the limit is three years.

The penalties of the one are so manifestly expansions of the penalties of the other, and "the repugnance between them is so clear and positive," (17 Howard, 85, 93,) that the later section may reasonably be regarded as the amended law.

The provision in section 5 of the act of 1868, which connects the violation of the law by the distiller with an intent to defraud the revenue, adds greater protection to innocent purchasers than section 25, and by this means better secures the object of the law, which is revenue.

If section 5 of the act of 1868 is a repeal of section 25 of the former act, it is clear that no forfeiture occurred, under the fifth and sixth counts, for they allege no intent to defraud the revenue, and the forfeiture under section 5 of the act of 1863 extends only to spirits owned by or found in the possession of the offending distiller.

Second. If it be held that section 5 of the act of 1868 does not repeal the former section, still under section 25 of the act of 1867 there was no forfeiture. We have already noticed the fact that the violations alleged in the fifth and sixth counts were not connected with the manufacture of these spirits, but related to the distiller's failure to make the prescribed entries and reports in regard to the manufacture of other spirits while these were in his possession. Whether the alleged forfeiture attached to these spirits or not depends upon the construction this count will give to section 25 already referred to. In the language of the section, the distiller shall forfeit, "for every such neglect or refusal, all the spirits made by him, or for him," &c. It would be absurd to claim that this language includes all the spirits the distiller ever made, without any limitation of time, place, or condition. The

most obvious and rational meaning of the provision is, that it refers only to the spirits in reference to which the violation occurred; and but for an additional modifying clause this would, no doubt, be the construction. But the enumeration of the four classes of things to be forfeited is followed by the modifying phrase, "found on the premises." These words manifestly extend the forfeiture beyond the property in reference to which the violation occurred, and makes it attach to certain other property belonging to the distiller. The learned counsel for the Government insist that these modifying words do not apply to the distilled spirits mentioned in the section. If this be so, the spirits in controversy are not forfeited, because it is neither proved nor alleged that the distiller neglected to make the proper entries in connection with the manufacture of these spirits.

But this is neither the obvious nor the proper construction of the statute. The counsel for the Government refer to the elementary doctrine "that a limiting clause is ordinarily to be confined to the last antecedent, unless there be something in the subject-matter of the statute which requires a different construction," and they refer for their authority to Cushing *vs.* Worrick, (9 Gray, 382.) An examination of that case will show that it does not support the construction proposed by the learned counsel. The clause of the statute, on the construction of which that case turned, was this: "Also reserving to the town of Hull the privilege of the shores, and of feeding all lands not comprehended within the aforementioned bounds." The court decided that the words, "not comprended within the aforementioned bounds," applied only to the "lands," and not to the "shores," in the preceding clause. The court said: "The difference in the form of the two clauses strengthens this conclusion." This difference is very marked. The words "shores" in the first clause is the

grammatical object of "reserving," is the thing reserved; while "the lands" is neither the grammatical nor the logical object of reserving, but of "feeding." It would do violence to the grammar, as well as the sense, to carry the modifying clause back across a verbal element, which logically constitutes another sentence. If the words "of feeding" were stricken out, it is obvious that the final limiting clause would refer to "shores," as well as to "lands." It would then read, "reserving to the town of Hull the privilege of the shores and land not comprehended within the aforementioned bounds." That change in the language would make the case strictly analogous to the language of section 25 of the act of March, 1867, referred to in the case at bar. Here each of the four classes of things forfeited is both the logical and grammatical object of the verb "shall forfeit." The skeleton of the sentence is this: "shall forfeit all spirits, stills, boilers, vessels, and materials found on the premises." But recurring to the elementary principle, quoted by the counsel for the Government, it is clear that "the subject-matter of the statute requires a different construction" from that which they propose. It is clear that Congress intended to extend the forfeiture to something more than the offending object itself; that when the neglect should be discovered, the forfeiture should also reach the other classes of property found on the distiller's premises.

This construction, besides being the natural one, is in harmony with other portions of the statutes relating to the tax on distilled spirits. The same forfeitures found in this section are repeated, as we have already seen, in section five of the act of March 31, 1868, where they are stated in more concise language. If section five does not repeal section twenty-five of the former act, it does at least aid in interpreting that act. Section five declares that "the distiller * * * * shall forfeit the distillery and distilling apparatus used by him, and all distilled

spirits, and all raw materials for the production of distilled spirts, found in the distillery and on the distillery premises." It is difficult to see how language could be used that should more clearly connect the limiting clause with all the objects of forfeiture previously specified. The expression, "found on the premises," and the expression, "found in the possession of the distiller," occur so frequently, throughout the revenue statutes, that their force and effect cannot be mistaken. (See sections 23, 26, and 45 of the act of July 13, 1866.)

Another expression in these statutes confirms the construction here insisted on. In some instances where the law has been violated, a forfeiture has been denounced against spirits and articles connected therewith, "wherever found;" thus indicating that in sections where these words are not used, the forfeiture is not so general in its application. Examples of this may be seen in section 22 of the act of March 2, 1867, and also in section 44 of the act of July 20, 1868, (15 Statutes at Large, 142.)

Another reason for the construction contended for is that the modifying words, "found on the premises," connected the forfeiture with the offending distiller, and thus protected innocent third parties.

Severe and highly penal as these statutes are, there runs through them all a careful provision for the protection of innocent *bona fide* purchasers. (See various sections referred to in the opinion of the circuit court in this case, 2 Abbott's U. S. Reports, 320, 321.)

In the case at bar it is admitted, in the agreed statement of facts, that John Henderson was a *bona-fide* purchaser, that he was in no way connected with the offences of the distiller, and that until the spirits were seized in the city of St. Louis he had no knowledge of any offence or delinquency in regard to them.

If the object of these laws be the collection of revenue, it must be made possible and safe to purchase distilled

spirits; and the record shows that Henderson used all reasonable precaution. These spirits were not "found on the premises," nor "in the possession or ownership of the offending distiller;" and forfeiture cannot attach to them unless the court shall so construe the law as to make the forfeitures of section 25 apply to spirits wherever found. Adopting the language of this court in a case already noted, "It is certainly proper to assume that in an act so highly penal forfeiture is not to be inferred from language capable of any milder construction." (Bennett *vs.* Hunter, 9 Wall., 326)

In the leading cases where forfeitures have been decreed against property in the hands of innocent parties, the courts have always placed their judgment on the ground of the positive and unmistakable language of the statute, as may be seen in U. S. *vs.* Grundy, 3 Cranch, 338; U. S. *vs.* 1960 Bags of Coffee, 8 Cranch, 398; U. S. *vs.* The brigantine Mars, 8 Cranch, 417.

III.

It is suggested, in the opinion of the circuit court, that even should it be held that these spirits were forfeited under section twenty-five, still "the Government, by accepting and retaining the taxes paid to it by the claimant, is estopped to say the property all the time belonged to it, by reason of previous forfeited title by the vendor or the claimant." (2 Abbot U. S., 322.)

The general doctrine that the Government is not estopped in penal cases does not apply to the case at bar. For, though there are penalties in the statute under which this proceeding is instituted, yet the Government is seeking only the enforcement of an alleged property right. If these penalties be enforced against John Henderson in this action it will result only in the recovery of the spirits or their value; and the principles of equitable estoppel are clearly applicable. An estoppel *in pais* is to

be resorted to solely as a measure to prevent injustice. Equitable estoppels are always applicable in a case where an attempt is made to assert a right subsequently, to the injury of others, which was waived by acquiescence at the time.

Herman's Law of Estoppel, 343 *et passim*.

The law provides for the appointment of numerous officers, and particularly defines their duties, touching the manufacture and sale of distilled spirits. These duties relate to the location and erection of the distillery, the quantity of materials used, the process of manufacture, the keeping of records, the removal of the spirits to bonded warehouses, the payment of the tax, and the release from the warehouse. So that if the officers perform their duties, and this must be presumed in the absence of proof to the contrary, the perpetration of a fraud is next to impossible. The Government provided and put into operation all the machinery requisite to prevent or detect any fraud. The means to do so were wholly within the power of its officers, and if third parties detect a fraud it must be by accident. The Government acts only through agents or officers; and must be equitably bound by their acts and declarations where there is no fraud.

The spirits in question passed under the surveillance described, and were found in the bonded warehouse by John Henderson, who was entirely innocent and ignorant of any fraud. He had every possible assurance that he had acquired a perfect title to the property he purchased. If it now be declared forfeited, he loses both the tax and the property, by no fault or negligence on his part. The facts present a clear case of estoppel, where the question between ordinary parties.

In civil actions, and in all cases like this, which involve a mere right to property, the same principle binds the

Government. This court has affirmed this doctrine in cases in which the property rights of the United States were in issue.

Lindsey *vs.* Hawes *et al.*, 2 Black., 554.
Alviso *vs.* United States, 8 Wallace, 337.

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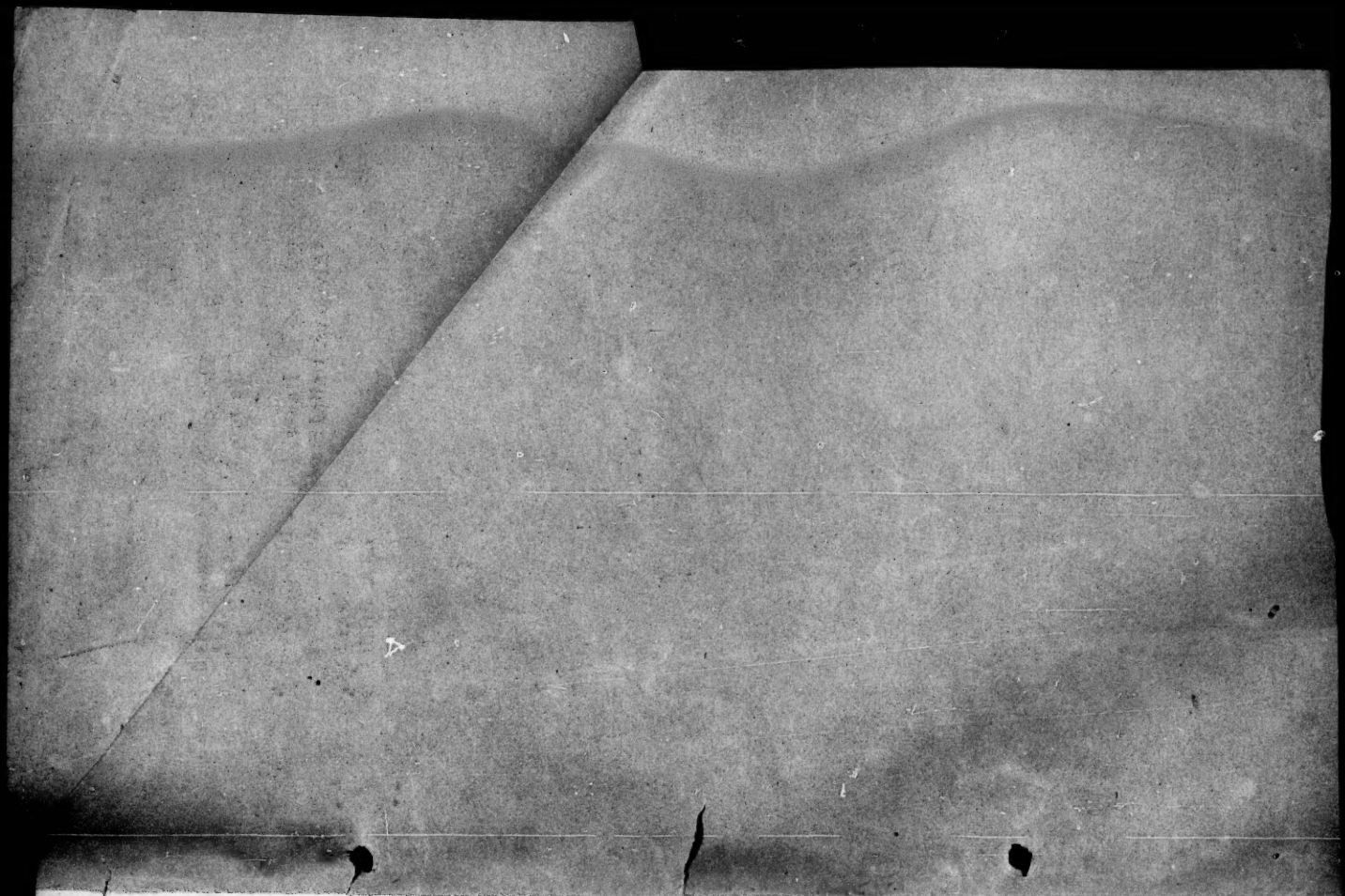

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14 Section Statute
has no application
to added Grounds —
It does not apply